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IN THE

Supreme Court of the United States

October Term, 1948.

No. 52.

INGRAM M. STAINBACK, Governor of the Territory of Hawaii, WALTER D. ACKERMAN, JR., Attorney General of the Territory of Hawaii, and W. H. LOPER, Superintendent of Public Instruction of the Territory of Hawaii,

Appellants,

vs.

MO HOCK KE LOK PO, an eleemosynary corporation, DAI KUNG CHINESE SCHOOL, an eleemosynary corporation, CHUNG SHAN CHINESE SCHOOL ASSOCIATION, an eleemosynary corporation, WAH CHAN THOM, WILFRED CHONG and LEONG NGET CHO,

Appellees.

BRIEF OF CONGRESS OF INDUSTRIAL ORGANIZATIONS, AMICUS CURIAE.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Amicus Curiae.

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BRIEF OF CONGRESS OF INDUSTRIAL ORGANIZATIONS, AMICUS CURIAE.

Preliminary Statement.

The issues raised by the instant case are of the most profound significance to *amicus curiae*. The Constitution of the Congress of Industrial Organizations, as do the constitutions of its various constituent labor organizations, contains statements of fundamental policy against discrimination because of race, creed, color, or nationality, and this organization is dedicated to the elimination of such discrimination.[1]

[1] Article II of the Constitution of the Congress of Industrial organizations: "First. To bring about the effective organization of the working men and women of America regardless of *race, creed, color, or nationality*, and to unite them for common action into labor unions for their mutual aid and protection."

Since its formation in 1935, the Congress of Industrial Organizations has condemned the evil of racial discrimination and has actively instituted educational and legislative programs to end that evil. During the recent world-wide conflict, the same period within which the Hawaiian statute here concerned was passed, this organization adopted a resolution in convention restating its opposition to all forms of racial discrimination.[2]

Amicus Curiae herein has a direct interest in the problems presented by this case. Many of its members in Hawaii and elsewhere are persons whose native tongue is other than English; of these and other members, many live in bilingual or multilingual communities. The Hawaiian statute, by prohibiting the teaching by anyone of any language other than English to children has and will augment existing racial, religious and nationalistic discord with a resultant serious effect upon the assimilation programs of this organization in its striving for the betterment of working conditions and living conditions for workers in this multilingual area and elsewhere. In addition, the discrimination against the working man, here the

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[2]"WHEREAS, discrimination against workers because of *race, religion or country of origin* is an evil characteristic of our fascist enemies. We of the democracies are fighting fascism at home and abroad by *welding all races, all religions and all peoples into united body* of warriors for democracy. Any discriminatory practices within our own ranks, against negroes or other groups, directly aids the enemy by creating division, dissension and confusion. Any discriminatory practices in employment policies hampers production by depriving the nation of the use of available skills and manpower; therefore be it

"RESOLVED, that the CIO reiterates its firm opposition to any form of racial or religious discrimination and renews its pledge to carry on the fight for protection in law and in fact of the rights of every racial and religious group to participate fully in our social, political and industrial life."

teacher, one of the most important occupations in a country dedicated to freedom of speech and thought and intellectual progress, through no fault or wrongdoing on his part, is of vital concern to the Congress of Industrial Organizations, dedicated to working for the welfare of the working man.

With approximately one-third of the population of the United States foreign born and their children,[3] assimilation of these persons with the rest of our citizenry presents grave social, economic and cultural problems in addition to problems created by the language differences. In these days of internationalism and the express policy of the United States in support of internationalism, the advantages of knowing one or more foreign languages cannot be denied. In Hawaii and other sections of this country where more than one language is essential, "the question is no longer *which* language, but how both languages may be satisfactorily utilized and their functions integrated."[4] Instead of recognizing this problem for what it is, the legislature of Hawaii has chosen one language from among the many in common usage in that community, and determined that only that language may be taught to children for a period of their lives, cutting off in their early formative years and perhaps forever, one opportunity to learn of the diverse cultural heritage of the community. By so doing, they are doing a disservice to that community and the United States as a whole in the betterment of relations with minority groups and in im-

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[3] Covello, Leonard, "Language as a Factor in Integration and Assimilation," 23 *Modern Language Journal* 323 (Feb. 1939)

[4] Gordon, Maxine W., "The Bilingual Problem of Puerto Rico," 54 *School and Society* 462 (June 21, 1947).

proving the culture of this country. "The potential resources lying fallow in the rich cultural background of the large numbers of our population who are of foreign descent, could, if effectively capitalized rather than suppressed, be made to yield a new world culture of infinite variety and fertility."[5]

The broadest aspects of this problem concern not merely the non-English speaking child continuing with education in his native tongue, but also the acquisition of foreign languages by the native English speaking child, all part of a process of assimilation in a multilingual community, indeed, a multilingual world. Just in the United States, there are besides Hawaii, many areas where large groups of native foreign language speaking people reside. For example: there are French speaking groups in New England and Louisiana; Scandinavians in the northern Middle West; some 2,000,000 Spanish speaking persons in the Southwest; Indian reservations; almost the whole population of Puerto Rico is native Spanish speaking and there are islands to a lesser extent in Pennsylvania, Connecticut, New York and practically all the large cities.[6]

Because of the necessity for the common usage of two or more languages in such a community, the question is not the theoretical one of the advantages of knowing foreign languages or at what age the mere intellectual exer-

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[5]Kaulfer, Walter V., and Holland D. Roberts, *A Cultural Basis for the Language Arts*, 1937, quoted in Kaulfer, Walter V., Grayson N. Kefauver, Holland D. Roberts, Editors, *Foreign Languages and Cultures in American Education*, 1942 (a compilation of reports of teachers who participated in the Stanford Language Arts Investigation for handling minority group language and cultural problems at the high school level).

[6]Tireman, L. S., *Teaching Spanish-Speaking Children*, 1948, p. 9.

cise of learning a foreign language should be given a child, on which there is a wide range of authority.[7] Here, some 178 foreign language schools, practically all of which teach either Japanese, Chinese or Korean languages, have been conducted and attended almost exclusively by persons of Japanese, Chinese and Korean ancestry, respectively [R. 450, 436-437]. The hours are arranged so that children attending the schools also attend, full time, the public schools [R. 435]. With respect to those attending these schools, then, the problem is not one of choice as to whether a second language should be begun in early elementary school, for English is here generally the second language and this the children are compelled to learn to some extent. Rather it is the problem of con-

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[7]Many years ago, it was "commonly considered appropriate to introduce students to a modern language at the college level." G. T. Busswell, *A Laboratory of the Reading of Modern Foreign Languages*, 1927. Since that time, the view has been increasingly accepted that for best results in both conversational and written work in foreign languages, with satisfactory retention throughout life, instruction should be given at a younger age. Leonard Bloomfield, "About Foreign Language Teaching," *Yale Review* 625 (June, 1945); Isabella Yeiser, "The Why and How of Teaching French to Little Children," 23 *Modern Language Journal* 591 (May, 1939) (Citing Angelo Patri, the noted New York educator, as an advocate of beginning the study of a foreign language at the age of three).

See, Weiner F. Leopold, *Speech Development of a Bilingual Child*, 1939, Preface vii: "From the wide reading in the enormous literature on child language I have come to the firm conviction that it is too early to attempt generalizations on this subject. . . . There are not enough exact records of individual cases to serve as the basis for a comprehensive study."

See also, J. S. Tireman, *Teaching Spanish-Speaking Children*, 1948, p. 19, and A. F. Watts, *The Language and Mental Development of Children*, 1944, pp. 51-57, 265 (A Study of English Children showing a tremendous increase in vocabulary between the ages of five through seven, a slowing down until fourteen, then a gradual tapering off as maturity approaches, after which the increase is negligible).

tinuing some studies in the native tongue and of the native culture of these children while learning a new language and to some extent a new culture in the public schools.

In countries abroad,[8] and in other parts of the United States, this situation has been given various treatments. In no case in modern times except for the instant cases, instances in the United States after World War I, remedied by this Court, and in certain fascist countries prior to World War II, has the teaching of a native tongue or a second language been prohibited to private parties and parents. The tendency, on the contrary, is to recognize the language and cultural problem in a realistic and sympathetic way by beginning the instruction of the dual or triple language of the community in the elementary schools. In California, for example, provision is made for the teaching of certain foreign languages, particularly Spanish, beginning in kindergarten, mandatory in cities of certain sizes and optional in others.[9] In Puerto Rico, after some experimentation in the public schools, in 1935, Spanish was used as the sole medium of instruction, with English continued throughout elementary school as a double time special subject.[10] In New Mexico, 50% of the total population, it has been estimated, is native Span-

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[8]For example, see: Darbelnet, J., "French for Anglo-Canadians in Quebec," 65 *Education* 529 (May, 1945); Silva, Homero Castillo, "Teaching the Foreign Language English in Chile," 65 *Education* 526 (May, 1945); Tuercke, Kurt Egon Fehr V., *Das Schubrecht der detuschen Volks gruppen in Ost-und*, 1938.

[9]*Cf.* California Education Code, Secs. 9361, 10302.

[10]Tireman, L. S., *Teaching Spanish Speaking Children*, 1948, pp. 32-36.

ish speaking. There, as in Texas, instruction in Spanish is begun in the elementary grades."[11]

This type of approach, in contrast to the oppressive means here used, has been to work toward assimilation, which cannot be done by one minority group by itself.[12] As was so well stated by Leonard Covello, Italian born principal of the Benjamin Franklin High School in East Harlem, New York:

> "In reaching the non-English speaking groups, it is futile to use only the English language. . . . Through languages familiar to them, the school should assist in bringing to them the best that America can offer. At the same time, the younger generation should be encouraged to learn the language of their parents. It is not only a part of their racial heritage, it becomes a bond of interest in the home of the foreign-born and their American-born children. It enables the family to share experiences. The older people learn from the child the things the child is learning in school and gain thereby a firmer hold on the heart and life of the child. In turn, the child gains from his parents a sense of belonging to fineness and greatness through an appreciation of his own racial heritage. . . . Lacking knowledge of the language of his parents, the child can share only partially in the life, experiences and affection of his parents. . . . Instead of merging gradually under the invisible pressure of a harmonious daily life,

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[11] *Ibid.*; Mays, Ruth, "Teaching Spanish in the Lower Grades," 25 *Hispania* 141 (May, 1942). It should be noted that in addition, there are and have been for many years private school systems of this sort throughout the country.

[12] *Farrington v. Tokushige*, 11 F. 2d 710, 714.

> the two heritages are frequently in conflict. . . . How can the problems of the child in school be adjusted when there is no way of arriving at an understanding of these problems through conferences with parents? . . . How can the school fulfill its mission if it isolates itself behind a language barrier?"[13]

This loss of contact between parent and child caused by too rapid a transition by the child into the foreign culture, generally under poor social and economic conditions, causes delinquency on the part of the child, in large part avoided where the native tongue is maintained along with the learning of English.[14]

Because of these considerations, the Congress of Industrial Organizations views this Hawaiian statute as an arbitrary and unreasonable limitation on the very basic right of earning a living in a useful and highly skilled field, and as a statute designed to defeat the gains of years of progress in the difficult and highly explosive field of assimilation of minority groups in this country, with necessarily a direct adverse effect upon the welfare of the common working man. This organization therefore files this brief as *amicus curiae* urging this Court to affirm the District Court decision below holding the statute unconstitutional.

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[13]Covello, Leonard, "Language as a Factor in Integration and Assimilation," 23 *Modern Language Journal* 323, 329-330 (Feb., 1939).

[14]Ross, H., "Crime and the Native Born Sons of Immigrants," 28 *Journal of Criminal Laws and Criminology* 202, 1938.

See also, Klineberg, Otto, *Social Psychology*, 1940; Shaw, C. R., *Jack-Roller*, 1930.

Statement of the Case.

Act 104, Session Laws of Hawaii, 1943 (Chapter 31, Revised Laws of Hawaii 1945) entitled "An Act Regulating the Teaching of Foreign Languages to Children" provides, in brief, that no child shall be taught a foreign language in any school; defined as a person or association which teaches "with or without fees" any language other than English "to two or more persons as a group, as a regular and customary practice. (Sec. 2(a)) unless he has passed the fourth grade, and in succeeding grades standard tests in English or unless he has passed the eighth grade or attained the age of fifteen years. (Sec. 3.) Teachers in such schools must be examined and certified to be "reasonably well versed in the usage and idiom of both the English language and the foreign language to be taught by such teacher." (Sec. 4.) Representatives of the department of public instruction of the Territory are empowered to attend these "schools" when in operation. (Sec. 5.) The Act provides for enforcement by the Attorney General by injunction proceedings (Sec. 6). Section 1 of the Act is a "Declaration of legislative findings" to the effect that the "study and persistent use of foreign languages by children of average intelligence in their early and formative years definitely detract from their ability properly to understand and assimilate their normal studies in the English language . . . and definitely retard their progress in . . . such studies . . . cause serious emotional disturbances, conflicts and maladjustments; . . . that it is to the best interest, and will promote the health and welfare, of children of tender age to defer foreign language study until certain proof of ability in English is shown or the fourth grade completed, or the child is nine, and such study be regulated until the child is fifteen years of age or has passed the eighth grade.

Appellees are three Hawaiian corporations chartered to teach the Chinese language, one a Chinese language teacher and two parents (the complaint was dismissed as to these two for lack of jurisdiction). Appellants are officials of the Territory of Hawaii. Appellees, successfully, sought to enjoin enforcement of this statute in the District Court of the United States for the Territory of Hawaii. Appellee school teacher alleges that he does not speak English and does not desire to submit to a test in the English language. Each of appellees alleged themselves to be bringing this action in a representative capacity for others similarly situated.

No question is here raised as to the power of the territory to compel the study and use of English as a medium of instruction in the public schools, nor the teaching of general subjects outside the public schools, nor any question of disloyalty to the United States.

The issue raised, aside from jurisdictional and other more technical points, is the conflict between the power of the state to legislate with regard to an admitted evil, retardation of students in the public schools, and the right of parents to direct and control the intellectual activities of their children outside compulsory school hours, along with the rights of those whose occupation is directly concerned with these intellectual activities. This brief will be limited to a discussion of this issue.

ARGUMENT.

I.

Act 104 Is Unconstitutional Because It Violates the Due Process Provisions of the Fifth Amendment.

It is purely by historical accident that the official language of the United States is not an Indian dialect, not Spanish, not French, but English. Under the guise of protecting the welfare of the child, the Legislature of the Territory of Hawaii has enacted a statute (Act 104, Session Laws of Hawaii 1943, Chapter 31, Revised Laws of Hawaii 1945) prohibiting in effect the formalized teaching in any manner of any language other than English during the early formative years of the child's life. Throughout history, various means have been used to unify large segments of populations politically, as for example Catholicism during the days of the Holy Roman Empire; it is only in fairly modern times that conformity in language has been considered as politically unifying and as an important aspect of nationalism.[15]

Appellants have attempted to distinguish the statute in the instant case from those held unconstitutional as a violation of fundamental civil liberties without due process of law in the *Society of Sisters*, *Meyer* and *Farrington* cases,[16] contending that those statutes were aimed at na-

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[15]Sapier, Edward, "Language," 9 *Encyclopaedia of the Social Sciences* 155.

[16]*Meyer v. Nebraska*, 262 U. S. 390; *Pierce v. Society of Sisters*, 268 U. S. 510; *Farrington v. Tokushige*, 273 U. S. 284.

tionalism and not the protection of the child (Appellant's Br. pp. 70-72).

Amicus Curiae agree with appellants that the question of the power of the legislature to enact this statute "must be adjudged against the factual background" (Appellants' Br. p. 96). The review of this background, however, does not include merely a review of facts showing retardation in the public schools in Hawaii and then a review of the range of authority among educators with respect to the effect of the simultaneous study of two languages by young children. The facts show a multilingual community, with certain cultural, social, economic as well as language traits in conflict with each other. The effect of the statute, whatever the declared legislative purpose, is to enforce conformity in a very important aspect upon the present and future generations of that community by prohibiting for a period of each and every child's life certain admittedly lawful and generally desirable knowledge to him, and to closely regulate the acquisition of this knowledge for some time thereafter.

Though the terms of this statute are broad, as was true of the Ohio statute,[17] the legislative history, the Record and appellants' contentions in the instant case show that the statute was aimed at a particular group, the Orientals, just as that statute was aimed at a particular group, the Germans.[18] Appellees and almost everyone of their patrons are Orientals, members of this group. For them the facts show, in this community the question is not so

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[17] *Bartels v. State of Iowa, Bohning v. Ohio*, 262 U. S. 404.

[18] It should be noted that Justice Holmes agreed with the majority of the Court as to the invalidity of this phase of the Statute

much one of studying a foreign language in addition to developing and perfecting English in the public schools, but rather the problem of continuing the study of a native tongue while learning English as a secondary language in the public schools. Study of a language necessarily includes some aspects of the culture, philosophy and history connected with such language. With this in mind, the contention that this statute is distinguishable from those in the *Society of Sisters*, *Meyer* and *Farrington* cases is not supported by the facts. Though the immediate objective of this statute is declared to be for the welfare of the child by curing retardation in the public schools, the ultimate effect, regardless, is to enforce a conformity in beliefs to the state without regard for the rights of the parents to direct and control the beliefs of the child. However desirable a common language may be for all people of the world, prohibitive restrictions of this nature may not be imposed upon individuals in the United States "without doing violence to both letter and spirit of the Constitution."[19]

II.

Act 104 Is an Unconstitutional Invasion of the Fundamental Freedoms Protected by the First Amendment.

In view of this contention that the instant case could involve no rights under the First Amendment (Appellants' Br. p. 76), it is necessary to determine the full breadth of the Fifth Amendment. The injury to appellees in its broadest sense is not merely a destruction of their business and property, but of their liberties including freedom

[19] *Meyer v. Nebraska*, 262 U. S. 390, 402.

of speech, assembly, religion and thought. Not only are their liberties in this respect injured, but those of their patrons. As this interference with their patron effects a destruction of appellees' business and property, the interest of appellee corporations and teacher in pressing for the protection of these liberties is "clear and immediate."[20]

In *Thomas v. Collins*, 323 U. S. 516, this Court made clear that the right of free speech has not been confined to any field of human interest and that it cannot be said that the safeguards of the First Amendment are wholly inapplicable to business or economic activity. It is the character of the right, not of the limitation, which determines what standard governs the choice. The occupation of a teacher is no less one concerned with the "dissemination of ideas" than that of the labor organizer involved in that case. There the mere threat of censorship through a licensing statute was held to constitute a violation of the Constitution. A far more serious violation exists in the instant case, for freedoms under the First Amendment are not merely threatened with censorship, but prohibited. The Legislature of Hawaii has attempted to find a solution to a problem of multilingualism which has affected the whole community. The state's power to legislate in the field of education, however, does not empower the state to abuse historic liberties and privileges. Though there has been no interpretation of the statute by the courts of the territory and appellants contend it will not be applied in an unconstitutional manner, in view of the circumstances, the statute on its face is a violation of the First Amendment. The definition of school in

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[20] *Pierce v. Society of Sisters*, 268 U. S. 510.

cludes not merely teachers in the formal sense, but parents of two or more children who instruct their children in their native tongue as a regular and customary practice. The statute applies whether the instruction is with or without "fees, compensation or other charges therefore." (Sec. 2(a).)

Appellants urge a different interpretation of the statute. Such can hardly be made in view of the language there employed. Any person or otherwise who teaches two or more children any language other than English through the children's early and formative years is within the statute. This is not merely the regulation of a business, but the teaching and learning of languages other than English being a lawful and useful pursuit, the prohibition of "The freedom and liberty to express ourselves privately and to hold private assemblies for lawful purposes and in a lawful manner . . . ." as well as the freedom to do so publicly, both protected by the First Amendment.[21]

The wisdom of the parents and the teachers in subjecting children to early training in the language and culture of their choice may not be attacked in this manner nor may their beliefs in this regard and the dissemination of their medium of speech and their culture be thus proscribed. "Men may believe what they cannot prove."[22]

Here, in the effort to provide for the welfare of the child, a field of knowledge is prohibited to him for an important part of his life; if unable or unwilling to subject himself to the terms of the statute, and if economic and

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[21] *Local 309 UFWA (CIO) v. Gates, Governor of Indiana*, 75 Fed. Supp. 620

[22] *United States v. Ballard*, 322 U. S. 78, 86.

social necessity compel the early termination of his formal education, perhaps forever.[23]

As this Court stated in *West Virginia Board of Education v. Barnette*, that the state is

> "educating the young for citizenship is reason for scrupulous protection of constitutional freedoms of the individual, if we are not to strangle the free mind at its source and teach youth to discount important principles of our government as mere platitudes."[24]

This Court goes on to state:

> "We apply the limitations of the constitution with no fear that freedom to be intellectually and spiritually diverse or even contrary will disintegrate the social organization."[25]

Whatever may be the rule with respect to legislation promoting merely the education, health and well-being of the child and removing obstructions thereto, the statute here involved, prohibiting for a period and severely regulating for another the intellectual freedom of parents, teachers and children in an attempt to shape present and future generations in the direction the state elects he should go, comes within the clear and present danger rule. Cases discussed by appellants under the first type of legislation have no bearing on the rule of law to be applied in the instant case. Vaccinations, limitations on the hours of labor, type and ages of employment, custody, adoption and guardianship proceeding where health or morals are

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[23]Opinion, R. 80.

[24]319 U. S. 624, 637.

[25]319 U. S. 624, 641.

jeopardized are directly connected with the health and moral welfare of the child. Where parents determine that acquisition of knowledge, in addition to that furnished in the public schools, is necessary for the sake of discipline of the child in his tender years and for preparation for his place in society as they know it, the state may not interfere. The wisdom of the parents in so doing, unless it causes serious health or delinquency problems, may not be questioned by the state. Throughout history proud parents and teachers have subjected children to beliefs and ideas in conflict with always a certain portion of the community. The resulting confused reaction to this training may no more be validly removed by legislation than the confusion felt by a child attending a Catholic or Hebrew or other religious school in a neighborhood of predominating contrary religious beliefs.

III.

Act 104 Is Unconstitutional as an Arbitrary and Unreasonable Exercise of the Police Power.

Under either the clear and present danger rule or the usual rule applied where legislation is attacked as denial of due process, the law must, at the very least, be reasonable, not arbitrary and the means selected must have a real and substantial relation to the object sought to be attained.[26]

Retardation in the schools is an admitted evil. Upon this the legislature may act. However, the legislation must not infringe upon rights secured by the fundamental law.[27]

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[26] *Nebbia v. New York*, 291 U. S. 502.

[27] *Otis v. Parker*, 187 U. S. 606, 609; *Booth v. Illinois*, 184 U. S. 425, 429.

To sustain the fundamental liberties of parents, children, schools and teachers against the present measure adopted to combat this recognized evil is not, under the circumstances (see Preliminary Statement and Statement of the Case, *supra*), "to strike down the common good but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members."[28]

The denial to the child of the guidance of his parents by the creation of language and cultural differences between them; the denial of free speech, assembly, religion and thought to parents, children and teachers; the increase in social, economic, and cultural conflicts bound to result from the oppressive treatment of minority groups; the attempt to promote conformity to the state by prohibiting acquisition of knowledge in certain fields, renders the provisions of this statute unreasonable and void. "Determination by the legislature of what constitutes proper exercise of police power is not final or conclusive but is subject to supervision by the courts."[29]

Even were the supposed evils and remedial action as stated by the legislature, this statute is unreasonable as including and excluding arbitrarily persons who should have been excluded or included respectively, under those findings. The public policy of the United States forbids any branch of the Federal or territorial governments to do what the Equal Protection Clause would deny to a state government.[30]

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[28] *Adkins v. Children's Hospital*, 261 U. S. 525, 561.

[29] *Lawton v. Steele*, 152 U. S. 133, 137.

[30] *Hurd v. Hodge*, 334 U. S. 24, 35-36.

A. Persons Arbitrarily Excluded.

The statute by defining "school" as "two or more persons as a group" (Sec. 2(a)) obviously excludes the situation where one child is taught, though as a "regular and customary practice" (Sec. 2(a)), and he is taught alone. This exclusion is not supported by the legislative findings.

A child taught a foreign language alone is no less subject to the evils found to exist than those taught in groups of two or more. Thus, arbitrarily, the statute discriminates in favor of one child families or those families with sufficient funds with which to provide private tutors for each and every child.

B. Persons Arbitrarily Included.

In providing that only those who have passed the fourth grade may undertake the study of "foreign languages," the legislature has made a provision conflicting with its express legislative findings that English deficiency is the cause of the retardation in the public schools, and once proficiency in English is met, the student may study a "foreign language," so long as his proficiency in English continues. By omitting provisions for such a situation, the legislature has arbitrarily included children who excel in languages, but may lack aptitude or inclinations to study other subjects. This is a denial of liberty of thought,

> "We can have intellectual individualism and the rich cultural diversities that we owe to exceptional minds only at the price of occasional eccentricity and abnormal attitudes."[31]

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[31] *West Virginia Board of Education v. Barnette*, 319 U. S. 624, 641-642.

Again, by the inclusion of all children, with the above exception (III A.), the act unreasonably discriminates against children of both above and below average intelligence. Whatever interpretation a territorial court might give the provisions, no child unless he has passed the fourth grade may study a foreign language. Those of above average intelligence whose progress in the public schools would not be retarded are arbitrarily included. Those of below average intelligence, who cannot meet the regular requirements of study in the public school systems anyway, as their education will probably terminate at an early age, forever lose the opportunity of youth "when familiarity with language is established,"[82] and the parents the opportunity to prepare a child to the best interest of the child to the full capacity of that child for the society in which he is to live.

By the inclusion of parents, the legislature has discriminated against non-English speaking persons in the most vital and important organization in our culture; the American home. Appellants contend the act will not be applied to them, but that is small comfort when they come within the express language of the statute if they teach two or more of their children as a group as a regular and customary practice. With respect to these people, the certificate and inspection provisions of the statute are particularly harsh and oppressive. The effect of the statute as

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[82] *Holmes dissent in Bartels v. Iowa*, 262 U. S. 404, 412.

to them more than any others is an infringement on the right to *use* a foreign language, prohibited by our Constitution.[33]

C. Restrictions Against Foreign Language Teachers.

Of very grave importance also to *amicus curiae* is the arbitrary discrimination against those in a particular occupation, useful, lawful, highly beneficial and skilled, without fault and with no relationship to the proficiency of persons in that occupation. This type of restriction is one of serious consequence to every working man or woman, especially those whose calling requires a lifetime of preparation and concentration. Not only is it a great skill to be able to teach languages well, but the teaching to children requires special art and training. By subjecting these persons to an arbitrary prohibition and regulation violates all basic principles of due process.[34] This profession involving the right of freedom of speech, religion (and it should be noted Sunday schools are not exempt from this provision, nor parochial schools of any kind), assembly and thought, the mere threat of censorship inherent in the licensing provisions of Section 4 and the inspection provisions of Section 5 of the Act are sufficient to invalidate those sections.[35]

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[33] *Yu Cong Eng v. Trinidad*, 271 U. S. 500

[34] *Adams v. Tanner*, 244 U. S. 590

[35] *Thomas v. Collins*, 323 U. S. 516

Conclusion.

Free experimentation by the state in educational fields is to be encouraged, but not at the expense of the fundamental civil liberties of individuals within the community and increasing racial and religious prejudices. This country has grown great on the interaction of cultural groups and the free dissemination of ideas. As the discrimination against one working man affects the rights of all, and the discrimination against one minority group or the restriction of acquisition of one field of knowledge is a signal to discriminate against and to restrict all. A statute of this nature must be struck down at the earliest opportunity lest it irreparably injure social, economic and cultural progress. We therefore respectfully urge this Court to affirm the judgment below.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
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